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IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

ARCTIC SLOPE REGIONAL CORPORATION,
Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION, *et al.*,
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit

RESPONSE OF THE OWNERS OF THE
TRANS ALASKA PIPELINE SYSTEM
IN OPPOSITION TO MOTION FOR LEAVE
TO FILE BRIEF AS AMICUS CURIAE

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**RESPONSE OF THE OWNERS OF THE
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Respondent owners of the Trans Alaska Pipeline System ("TAPS")¹ hereby submit their opposition to the

¹ The seven TAPS owners are: Amerada Hess Pipeline Corporation ("Amerada Hess"), ARCO Pipe Line Company ("ARCO"), Exxon Pipeline Company ("Exxon"), Mobil Alaska Pipeline Company ("Mobil"), Phillips Alaska Pipeline Corporation ("Phillips"), Sohio Alaska Pipe Line Company ("Sohio"), and Unocal Pipeline Company ("Union"). One of the original TAPS owners, BP Pipeline Inc. ("BP") was recently merged into Sohio, following the

motion of the Alaska Federation of Natives ("AFN") for leave to file a brief as *amicus curiae*. Accompanying AFN's motion is its brief in support of the petition for certiorari filed by Arctic Slope Regional Corporation ("ASRC"). The TAPS owners submit that AFN has shown no justification for appearing at such a late date in this protracted litigation and can make no positive contribution to the factual or legal issues at stake in this case.

In the first place, AFN has waited an inordinate amount of time before attempting to protect its asserted interest in TAPS rates. Administrative proceedings before the Interstate Commerce Commission ("ICC") and Federal Energy Regulatory Commission ("FERC" or "Commission") regarding TAPS rates were conducted continuously and publicly over a span of almost 10 years. At no time did AFN so much as enter an appearance in those proceedings, despite its own assertion that it has represented the interests of Alaska Natives for that entire period. AFN should not now be permitted to atone for its lack of diligence by claiming status before this Court as *amicus curiae*.

In the second place, AFN does not even purport to serve any interest not already fully represented before this Court. In its motion and brief, AFN claims that it represents "all Alaska Natives" (AFN Motion at 1), whose economic interests in Alaskan North Slope petroleum are assertedly affected by the court of appeals decision upholding the FERC's orders in *TAPS*. (AFN Br. at 1.) Specifically, AFN contends that the FERC's approval of the settlement in *TAPS* adversely affects the value of its interests in Alaska North Slope petroleum. However,

acquisition by The British Petroleum Company p.l.c. of Sohio's corporate parent. Respondent TAPS owners previously submitted a statement in accordance with Rule 28.1 in the appendix to their brief in opposition to certiorari, filed July 16, 1988.

this interest is indistinguishable from that already represented by ASRC in this proceeding. ASRC has continually asserted before the ICC, the FERC, the court of appeals and this Court that its economic interest in potential petroleum reserves on its land is adversely affected by TAPS rates and the settlement approved by the FERC. Thus, as ASRC stated in its brief to the court of appeals, "The interests of ASRC and all Alaska Natives have been intertwined with TAPS since the late 1960's when oil was discovered at Prudhoe Bay and plans were devised to transport it . . . to Valdez." (C.A. Br. at 5.)

Finally, granting AFN leave to file its brief in this matter would contribute little, if anything, to the resolution of the legal and factual issues in this case. Aside from duplicating in a summary fashion the arguments already made in ASRC's petition, AFN's brief contains certain factual misstatements and erroneous statements of law. For example, AFN suggests, contrary to fact, that the revenues received by Alaska Natives under 43 U.S.C. § 1606(i) will be reduced as a result of the FERC's approval of the settlement of the *TAPS* proceeding. (AFN Br. at 3.) However, by the time the *TAPS* settlement was announced in June of 1985, ASRC and all other regional corporations represented by AFN had been completely reimbursed through royalties collected on ANS crude petroleum. Similarly, AFN contends that "[its] share of revenue from [ASRC's] lands is diminished," as a result of the *TAPS* settlement. (*Id.*) AFN overlooks, however, that ASRC presently earns no petroleum-related revenue from its lands, since ASRC has not yet discovered oil that would be extractable in commercial quantities. AFN's "share" of such revenue would therefore be zero.

Like ASRC, AFN has misidentified the governing statute in this proceeding as Section 13(1) of the Interstate Commerce Act, 49 U.S.C. § 13(1). Because respondent

TAPS owners have adequately addressed that error in their brief in opposition to ASRC's petition for certiorari, (TAPS Owners' Br. at 12-17), those arguments need not be repeated here.

CONCLUSION

For the foregoing reasons, Respondent Owners Of The Trans Alaska Pipeline System request that the Motion For Leave To File Brief For The Alaska Federation Of Natives As Amicus Curiae In Support Of Petitioner be denied.

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